

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE CONTRACT FILING OF	)	
KENTUCKY UTILITIES COMPANY	)	CASE NO. 2000-542
TO PROVIDE ELECTRIC SERVICE	)	
TO NORTH AMERICAN STAINLESS	)	

O R D E R

By Order dated December 13, 2000, the Commission initiated this case to investigate two issues relating to a new contract filed by Kentucky Utilities Company ("KU") to provide additional electric service to North American Stainless ("NAS") for the operation of a steel mill melt shop. Those issues were: (1) whether the rates set forth in the contract are reasonable, and (2) whether relevant circumstances pertaining to certain terms of the contract justify KU's request for confidential treatment pursuant to Kentucky's Open Records Act, KRS 61.871 *et seq.* KU was requested to file additional information on both issues and KU has responded.

The Commission issued an Interim Order on April 26, 2001, finding the rates to be reasonable and approving the contract. An informal conference was scheduled to discuss the request for confidential protection, but it was cancelled after KU requested time to resolve this issue with NAS. Subsequently, on May 30, 2001, KU filed a revised petition for confidential treatment of certain terms, conditions, and charges contained within the contract.

In the revised petition KU claims, among other things, that it would be competitively injured if its customers were made aware of the prices charged to this particular customer. The customers would, KU reasons, use the information to manipulate the negotiating process. While this reasoning may be legitimate, we must, as a matter of law, reject it as a basis for nondisclosure of otherwise public records. Kentucky's Open Records Law, at KRS 61.878(1)(c), exempts information that would "permit an unfair commercial advantage to *competitors* of the entity that disclosed the records." [Emphasis added]. KU's customers are not its "competitors." Moreover, we do not believe it is appropriate to withhold rate information because disclosure would ensure that each customer could learn the rates given to other similarly situated customers. Pursuant to KRS 278.170(1), customers are entitled to nondiscriminatory rates.

KU also, however, claims competitive injury on the basis that public disclosure of certain terms of the contract would enable its competitors to adjust their negotiating strategy when competing with KU for customers. Giving such an advantage to its competitors, KU contends, could adversely affect KU's captive ratepayers who lack the choices available to industrial customers who may relocate facilities to obtain a better rate. Finally, KU also points out that KRS 278.160 was recently amended to make it clear that, if the Open Records Act otherwise permits confidential treatment of terms of a utility contract, the terms need not be made publicly available simply because they involve utility rates. KRS 278.160(3). The Commission finds that KU could suffer competitive injury if the rate terms of the contract are publicly disclosed to utilities and other power suppliers.

IT IS THEREFORE ORDERED that:

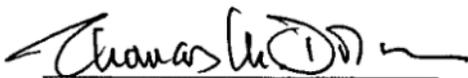
1. KU's May 30, 2001 revised petition for confidential protection of its contract with NAS is granted and the contract terms for which protection was sought shall be withheld from public inspection.

2. In the event that the information granted confidential protection becomes publicly available or no longer warrants confidential treatment, KU shall inform the Commission, pursuant to 807 KAR 5:001, Section 7(9)(a), so the information can be included in the public record.

Done at Frankfort, Kentucky, this 19<sup>th</sup> day of December, 2001.

By the Commission

ATTEST:

  
Executive Director